
(1958) 11 GAU CK 0001
In the Gauhati High Court
Case No : Civil Rule No. 119 of 1958

Bindu Nath Chaudhury

APPELLANT

Vs

The State of Assam and Others

RESPONDENT

Date of Decision : 24-11-1958

Acts Referred:

Constitution of India, 1950 — Article 226, 311

Citation : AIR 1959 Guw 118

Hon'ble Judges : Haliram Deka, J;G. Mehrotra, J

Bench : Division Bench

Advocate : M.C. Pathak, for the Appellant; R.K. Goswami, Jr. Govt. Advocate, H. Goswami and B.M. Goswami, for the Respondent

Final Decision : Dismissed

Judgement

H. Deka, J.—This is a petition under Article 226 of the Constitution for a writ for quashing the Order of the Government appointing respondent No. 4, Jatindra Nath Chaudhury a Mauzadar of the Batahgila mauza. The facts leading to this petition are as follows :

2. The Deputy Commissioner of Kamrup district invited applications for filling up the vacancy of a Mauzadar within his jurisdiction in the Batahgila mauza of the Kamrup district, and there were only two candidates,—the petitioner and respondent 4. The Deputy Commissioner recommended appointment of respondent 4 Jatindra Nath Chaudhury as the Mauzadar and he was actually appointed mauzadar by the Govt. subject to furnishing cash security of Rs. 5,000/- and the balance of Rs. 22,000/- in property security within seven days from the date of the receipt of the appointment letter, and this was sometime in March, 1957.

The respondent No. 4 took charge of the mauza accordingly and started collection of revenue but he not being in a position to furnish the security, asked for reduction of the cash security to Rs. 3,000/-and also prayed for instalment for

Paying up this amount. But this request did not find favour either with the Deputy Commissioner or the State Government.

The State Government, however, asked the Deputy Commissioner by their letter of 18-7-57 to allow him reasonable time for furnishing the cash security. The Deputy Commissioner further reported on 19-9-57 to the Government to the effect that Jatindra Nath Chaudhury had still failed to furnish the security as asked. Subsequently, the Deputy Commissioner recommended removal of Jatindra Nath Chaudhury from office and for appointment of petitioner Bindu Nath Chaudhury in his place as mauzadar.

The State Government acting upon the same rejected Jatindra Nath Chaudhury's petition for further extension of time for furnishing security and approved of the appointment of Bindu Nath Chaudhury as mauzadar of Batahgila mauza subject to verification of his antecedents and character and also of furnishing requisite securities. This was by the order of 5-2-1958. By an order dated 11-2-1958, the Deputy Commissioner, Kamrup appointed Bindu Nath Chaudhury as the Mauzadar of Batahgila mauza on the terms of the Government letter, namely subject to verification of his antecedents and character and also of furnishing cash security of Rs. 5,000/- and the balance in property security with a direction to furnish the requisite security immediately.

The petitioner in pursuance of this order of the Deputy Commissioner dated 11-2-1958, furnished security on 14-2-58, but he was not entrusted with the charge of the Mauzadarship which still rested with respondent No. 4, Jatindra Nath Chaudhury in spite of the petitioner's applications to the Deputy Commissioner on 25-3-1958 and 27-4-1958.

Subsequently, however, on 6-5-58, the Provincial Government issued an order to the effect that the appointment of Bindu Nath Chaudhury as Mauzadar of Batahgila mauza is cancelled and Jatindra Nath Chaudhury is reappointed as the Mauzadar in spite of the previous order in favour of the petitioner. It will be useful to quote the order of 6-5-58 the legality of which has been challenged and which is sought to be quashed by the petitioner. The order of the Government is on the following terms ;

"On review it is seen that Shri Jatindra Nath Chaudhury, Mouzadar of Batahgila mouza has since furnished the cash security of Rs. 5,000/- (Rupees five thousand) only and the mouza is still in his charge. The petition is allowed and in partial modification of orders communicated in Government Memo. No. 117/56/49 dated 5-2-58, the appointment of Shri Bindu Nath Chaudhury as mouzadar of Batahgila mouza is hereby cancelled.

Shri Jatindra Nath Chaudhury is therefore re-appointed mouzadar of Batahgila.

Sd. K.C. Barua, Secretary to the Govt. of Assam, Revenue (L. Rev.) Department."

3. The material point, therefore, has been whether it was within the competence

of the Government to pass the order dated 6-5-57 by way of review in spite of the earlier order of the Government appointing Bindu Nath Chaudhury as the Mauzadar in place of Jatindra Nath Chaudhury who failed to furnish security in time and within the period extended by the Government.

The objection of Mr. Pathak for the petitioner can be classed under three heads : (1) That the State Government did not enjoy the power of reviewing its own order; (2) that the order in effect was in violation of the provisions of Article 311 of the Constitution of India; and (3) that the order was bad for violation of the principle of natural justice inasmuch as Bindu Nath Chaudhury was not given any chance to appear before the State Government or contest the review petition on the basis of which Jatindra Nath Chaudhury has been reappointed as Mauzadar of the Batahgila mauza.

4. In regard to the first contention, namely the power of the State Government to review its own order, we may say that the order is purely an administrative order and the Government has the absolute right to pass any order appointing or dismissing a mauzadar who is in essence an agent for collection of the revenue on behalf of the State Government, on the basis of certain commission.

Here it is not disputed that the order in question is administrative in nature, and the Government has power to cancel its previous order and revise the same when they consider it necessary. There is no rule or any statute laying down restriction on the free use of this power of the State Government as in the case of fishery settlements where the conduct of the Government is regulated by the Rules framed under the Assam Land and Revenue Regulation.

In these circumstances, it cannot be said that any rule has been violated by the State Government in re-appointing Jatindra Nath Chaudhury or in cancelling the appointment of Bindu Nath Chaudhury which was proposed and communicated but not in any strict sense given effect to.

There was nothing to show in the petition itself that the petitioner's antecedents were examined or that he was in fact entrusted with the duties of the mauzadar, the charge and responsibilities having remained with Jatindra Nath Chaudhury. Therefore, the power enjoyed by the State Government to review its order at this stage is within its jurisdiction and cannot be challenged under Article 226 of the Constitution.

5. In regard to the contention that the provision of Article 311 was violated, we might say that this contention as well has no substance, since the petitioner at no time held a civil post, though it is not necessary for us to examine for the purpose of this case as to whether the post of the Mauzadar is a civil post as contended by Mr. Pathak.

The petitioner did not hold the post as contended by Mr. Pathak by virtue of the Government order which only suggested that he might be appointed a Mauzadar on certain terms. Even though the security was furnished, no responsibility of the

post vested on him since he was not entrusted with the duties of a Mauzadar respondent No. 4 having even then functioned as the Mauzadar.

In this light we cannot say that the principle of Article 311 of the Constitution applied, apart from the fact that there was no question of dismissal or reduction in rank of the petitioner as contemplated within the provision of this Article. Mr. Pathak incidentally argued that it amounted also to discrimination, because Jatindra Nath Chaudhury was appointed in preference to Bindu Nath Chaudhury. In our view selecting a candidate out of a number of candidates by the Government does not amount to discrimination in the eye of law.

6. The third and last contention on behalf of the petitioner was that the principle of natural justice was" violated inasmuch as Bindu Nath Chaudhury was not given a hearing at the time of the review of the order against respondent No. 4 which was altered or reconsidered. The statute or rules did not give the petitioner any right to be heard and as a matter of fact there was no appeal against the order appointing him as Mauzadar, but the respondent only sought for a review of the order removing him from the mauzadarship or for reconsideration of the previous order. In these circumstances, we do not think that there was any denial of the principle of natural justice. In our estimation, therefore, none of the points has much weight and we accordingly dismiss the application; but in the circumstances of the case without any cost. The Rule is discharged.

G. Mehrotra, J.

7. I agree.